
SENATE BILL 5459

State of Washington

56th Legislature

1999 Regular Session

By Senators T. Sheldon, Oke and Morton

Read first time 01/22/1999. Referred to Committee on Natural Resources, Parks & Recreation.

1 AN ACT Relating to aquatic lands leases; amending RCW 79.90.465,
2 79.90.480, and 79.90.490; and adding a new section to chapter 79.90
3 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 79.90.465 and 1984 c 221 s 4 are each amended to read
6 as follows:

7 The definitions in this section apply throughout chapters 79.90
8 through 79.96 RCW.

9 (1) "Water-dependent use" means a use which cannot logically exist
10 in any location but on the water. Examples include, but are not
11 limited to, water-borne commerce; terminal and transfer facilities;
12 ferry terminals; watercraft sales in conjunction with other water-
13 dependent uses; watercraft construction, repair, and maintenance;
14 moorage and launching facilities; aquaculture; log booming; and public
15 fishing piers and parks.

16 (2) "Water-oriented use" means a use which historically has been
17 dependent on a waterfront location, but with existing technology could
18 be located away from the waterfront. Examples include, but are not
19 limited to, wood products manufacturing, watercraft sales, fish

1 processing, petroleum refining, sand and gravel processing, log
2 storage, and house boats. For the purposes of determining rent under
3 this chapter, water-oriented uses shall be classified as water-
4 dependent uses if the activity either is conducted on state-owned
5 aquatic lands leased on October 1, 1984, or was actually conducted on
6 the state-owned aquatic lands for at least three years before October
7 1, 1984. If, after October 1, 1984, the activity is changed to a use
8 other than a water-dependent use, the activity shall be classified as
9 a nonwater-dependent use. If continuation of the existing use requires
10 leasing additional state-owned aquatic lands and is permitted under the
11 shoreline management act of 1971, chapter 90.58 RCW, the department may
12 allow reasonable expansion of the water-oriented use.

13 (3) "Nonwater-dependent use" means a use which can operate in a
14 location other than on the waterfront. Examples include, but are not
15 limited to, hotels, condominiums, apartments, restaurants, retail
16 stores, and warehouses not part of a marine terminal or transfer
17 facility.

18 (4) "Log storage" means the water storage of logs in rafts or
19 otherwise prepared for shipment in water-borne commerce, but does not
20 include the temporary holding of logs to be taken directly into a
21 vessel or processing facility.

22 (5) "Log booming" means placing logs into and taking them out of
23 the water, assembling and disassembling log rafts before or after their
24 movement in water-borne commerce, related handling and sorting
25 activities taking place in the water, and the temporary holding of logs
26 to be taken directly into a processing facility. "Log booming" does
27 not include the temporary holding of logs to be taken directly into a
28 vessel.

29 (6) "Department" means the department of natural resources.

30 (7) "Port district" means a port district created under Title 53
31 RCW.

32 (8) The "real rate of return" means the average for the most recent
33 ten calendar years of the average rate of return on conventional real
34 property mortgages as reported by the federal home loan bank board or
35 any successor agency, minus the average inflation rate for the most
36 recent ten calendar years.

37 (9) The "inflation rate" for a given year is the percentage rate of
38 change in the previous calendar year's all commodity producer price
39 index of the bureau of labor statistics of the United States department

1 of commerce. If the index ceases to be published, the department shall
2 designate by rule a comparable substitute index.

3 (10) "Public utility lines" means pipes, conduits, and similar
4 facilities for distribution of water, electricity, natural gas,
5 telephone, other electronic communication, and sewers, including sewer
6 outfall lines.

7 (11) "Terminal" means a point of interchange between land and water
8 carriers, such as a pier, wharf, or group of such, equipped with
9 facilities for care and handling of cargo and/or passengers.

10 (12) "State-owned aquatic lands" means those aquatic lands and
11 waterways administered by the department of natural resources or
12 managed under RCW 79.90.475 by a port district. "State-owned aquatic
13 lands" does not include aquatic lands owned in fee by, or withdrawn for
14 the use of, state agencies other than the department of natural
15 resources.

16 (13) "Commercial marina" means a marina that charges rent for
17 moorage at or near market rates and has six hundred or more lineal feet
18 of moorage per acre on leased state-owned aquatic lands.

19 (14) "Revenue" means the annual sum of the total revenue that is
20 generated from the rental of moorage space on the state-owned aquatic
21 lands, including all rental payments and additional membership fees or
22 dues required as a condition of renting or using the moorage space.

23 **Sec. 2.** RCW 79.90.480 and 1998 c 185 s 2 are each amended to read
24 as follows:

25 Except as otherwise provided by this chapter, annual rent rates for
26 the lease of state-owned aquatic lands for water-dependent uses shall
27 be determined as follows:

28 (1)(a) The rent for commercial marinas shall be determined by
29 multiplying the revenue of the marina times three and one-half percent.
30 The rent shall be determined under this subsection annually subject to
31 RCW 79.90.490 (2) and (3) and section 4 of this act. The rent for all
32 other water-dependent uses shall be determined by the assessed land
33 value, exclusive of improvements, as determined by the county assessor,
34 of the upland tax parcel used in conjunction with the leased area or,
35 if there are no such uplands, of the nearest upland tax parcel used for
36 water-dependent purposes divided by the parcel area equals the upland
37 value.

1 (b) The upland value times the area of leased aquatic lands times
2 thirty percent equals the aquatic land value.

3 (2) As of July 1, 1989, and each July 1 thereafter, the department
4 shall determine the real capitalization rate to be applied to water-
5 dependent aquatic land leases commencing or being adjusted under
6 subsection (3)(a) of this section in that fiscal year. The real
7 capitalization rate shall be the real rate of return, except that until
8 June 30, 1989, the real capitalization rate shall be five percent and
9 thereafter it shall not change by more than one percentage point in any
10 one year or be more than seven percent or less than three percent.

11 (3) The annual rent shall be:

12 (a) Determined initially, and redetermined every four years or as
13 otherwise provided in the lease, by multiplying the aquatic land value
14 times the real capitalization rate; and

15 (b) Adjusted by the inflation rate each year in which the rent is
16 not determined under subsection (3)(a) of this section.

17 (4) If the upland parcel used in conjunction with the leased area
18 is not assessed or has an assessed value inconsistent with the purposes
19 of the lease, the nearest comparable upland parcel used for similar
20 purposes shall be substituted and the lease payment determined in the
21 same manner as provided in this section.

22 (5) For the purposes of this section, "upland tax parcel" is a tax
23 parcel, some portion of which has upland characteristics. Filled
24 tidelands or shorelands with upland characteristics which abut state-
25 owned aquatic land shall be considered as uplands in determining
26 aquatic land values.

27 (6) The annual rent for filled state-owned aquatic lands that have
28 the characteristics of uplands shall be determined in accordance with
29 RCW 79.90.500 in those cases in which the state owns the fill and has
30 a right to charge for the fill.

31 (7) For leases for marina uses only, beginning on June 11, 1998,
32 the annual rental rates in effect on December 31, 1997, shall remain in
33 effect until July 1, 1999, at which time the annual water-dependent
34 rent shall be determined by the method in effect at that time. In
35 order to be eligible for the rate to remain at this level, a marina
36 lease must be in good standing, meaning that the lessee must be current
37 with payment of rent, the lease not expired or in approved holdover
38 status, and the lessee not in breach of other terms of the agreement.

1 (~~(8) For all new leases for marinas, or any other water dependent~~
2 ~~use, issued after December 31, 1997, the initial annual water dependent~~
3 ~~rent shall be determined by the methods in subsections (1) through (6)~~
4 ~~of this section.~~)

5 **Sec. 3.** RCW 79.90.490 and 1984 c 221 s 9 are each amended to read
6 as follows:

7 (1) For leases in effect on October 1, 1984, the rent shall remain
8 at the annual rate in effect on September 30, 1984, until the next
9 lease anniversary date, at which time rent established under RCW
10 79.90.480 or 79.90.485 shall become effective. If the first rent
11 amount established is an increase of more than one hundred dollars and
12 is more than thirty-three percent above the rent in effect on September
13 30, 1984, the annual rent shall not increase in any year by more than
14 thirty-three percent of the difference between the previous rent and
15 the rent established under RCW 79.90.480 or 79.90.485. If the first
16 rent amount established under RCW 79.90.480 or 79.90.485 is more than
17 thirty-three percent below the rent in effect on September 30, 1984,
18 the annual rent shall not decrease in any year by more than thirty-
19 three percent of the difference between the previous rent and the rent
20 established under RCW 79.90.480 or 79.90.485. Thereafter,
21 ~~((notwithstanding any other provision of this title))~~ except for
22 commercial marina leases, the annual rental established under RCW
23 79.90.480 or 79.90.485 shall not increase more than fifty percent in
24 any year.

25 (2) For commercial marina leases, the lessee may elect to convert
26 to the rent valuation method in RCW 79.90.480(1) as the next
27 revaluation date of the lease as a water-dependent use under RCW
28 79.90.480(2).

29 (3) If the annual rent for commercial marinas determined under
30 subsection (2) of this section increases by five hundred dollars or
31 more, the rent increase shall be phased in relatively over four years
32 until full rental rate determined under subsection (1) of this section
33 is attained.

34 (4) This section applies only to leases of state-owned aquatic
35 lands subject to RCW 79.90.480 or 79.90.485.

36 NEW SECTION. **Sec. 4.** A new section is added to chapter 79.90 RCW
37 to read as follows:

1 For all new or renewed leases the annual rent may not be less than
2 five hundred dollars.

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